



March 1, 2018

VIA ONLINE PORTAL

U.S. Department of Housing and Urban Development
Freedom of Information Act Office
451 7th Street SW, Room 10139
Washington, DC 20410-3000
Submitted via Online Portal

Re: Freedom of Information Act Request

Dear Freedom of Information Act Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the implementing regulations for the U.S. Department of Housing and Urban Development (HUD), 24 C.F.R. Part 15, American Oversight makes the following request for records.

On February 27, *The Guardian* reported that HUD Secretary Benjamin Carson's wife, Lacena "Candy" Carson, had previously sought funds for the redecoration of Secretary Carson's future office, with a HUD official directing that the \$5,000 limit be circumvented.¹ Later reporting revealed that HUD spent over \$31,000 of taxpayer money on a dining table set for Secretary Carson.² These reports precipitated a public outcry and a congressional inquiry.³ In response to the public outrage over apparent misuse of funds, it appears that private individuals purported to make public statements for HUD and Secretary Carson. First, on February 28, two statements on Secretary Carson's private Twitter account, which he shares with his wife, seemed to rebut the allegations of misuse of HUD funds.⁴ Then, on March 1, Armstrong Williams, a political commentator and businessman associated with Sinclair Broadcast Group and friend of Secretary Carson, provided CNN with a statement from Secretary Carson regarding HUD's alleged misuse of funds, though Mr. Williams is not an employee of the agency.⁵ Further demonstrating the

¹ Jon Swaine & Ben Jacobs, *Housing Official Says She Was Replaced for Rejecting Carson's Costly Office Redecoration*, THE GUARDIAN (Feb. 27, 2018, 5:00 AM), <https://www.theguardian.com/us-news/2018/feb/27/hud-ben-carson-office-redecoration-trump-appointee>.

² Glenn Thrush, *Ben Carson's HUD Spends \$31,000 on Dining Set for His Office*, N.Y. TIMES, Feb. 27, 2018, <https://www.nytimes.com/2018/02/27/us/ben-carson-hud-furniture.html>.

³ Cristiano Lima, *Gowdy Seeks Answers on Allegations of Excessive Spending, Retaliation at HUD*, POLITICO (Feb. 28, 2018, 6:25 PM), <https://www.politico.com/story/2018/02/28/trey-gowdy-hud-carson-spending-430823>.

⁴ Ben & Candy Carson (@RealBenCarson), TWITTER, <https://twitter.com/RealBenCarson/status/969040252177403906> (last visited Mar. 1, 2018).

⁵ Rene Marsh, *Ben Carson Says He Wants to Cancel \$31,000 Dining Room Furniture Order*, CNN (Mar. 1, 2018, 1:12 PM), <https://www.cnn.com/2018/03/01/politics/carson-dining-room-canceled/index.html>.



potential influence of Sinclair Broadcasting Group on HUD's operations, Raffi Williams, the HUD spokesperson involved in responding to these allegations, was previously employed by Sinclair Broadcast Group affiliate Circa.com.⁶

American Oversight seeks to determine whether private individuals and entities are influencing HUD or conducting agency business, and representing agency views, in unofficial capacities.

Requested Records

American Oversight requests that HUD produce the following within twenty business days:

All records reflecting communications (including but not limited to emails, email attachments, text messages, chat or Slack messages, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any responsive communications, summaries of any responsive communications, or other materials) between (a) Secretary Benjamin Carson; his chief of staff; or any political appointees* in the Office of the Secretary and (b) any employee or representative of Sinclair Broadcast Group (@sbgi.net) or any of its affiliates or subsidiaries, including but not limited to Sinclair Television Group, Inc., Sinclair Investment Group, LLC and Circa News (@circanews.com), and including Murray Carson.

*"Political appointee" should be understood as any person who is a Presidential Appointee with Senate Confirmation (PAS), a Presidential Appointee (PA), a Non-career SES, any Schedule C employees, or any persons hired under Temporary Non-career SES Appointments, Limited Term SES Appointments, or Temporary Transitional Schedule C Appointments.

Please provide all responsive records from January 20, 2017, to the date the search is conducted.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If HUD uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail

⁶ Thrush, *supra* note 2; *Raffi Williams*, LINKEDIN, <https://www.linkedin.com/in/raffiwilliams/> (last visited Mar. 1, 2018).

messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.⁷ **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**⁸

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered HUD’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**⁹ **Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files.** For example, a custodian may have deleted a responsive email from his or her email program, but HUD’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

⁷ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

⁸ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

⁹ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”¹⁰ If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”¹¹ Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”¹² Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”¹³

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.¹⁴ Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, HUD is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and HUD can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

¹⁰ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

¹¹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹² *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

¹³ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

¹⁴ *Mead Data Central*, 566 F.2d at 261.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 24 C.F.R. § 15.106(k), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to public understanding of those operations. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because “disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.”¹⁵ The disclosure of the information sought under this request will document and reveal the activities of the federal government, including how an agency makes official statements to the public regarding alleged wasteful spending. Taxpayers deserve to know whether HUD officials are using their money responsibly and whether the agency is making accurate representations to the public about its spending. The public further deserves to know whether private individuals and entities have influence, or even control, over agency functions. And, as described in more detail below, American Oversight’s website and social media accounts demonstrate its “ability and intention to effectively convey information to the public.”¹⁶

This request is primarily and fundamentally for non-commercial purposes.¹⁷ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.¹⁸ American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,¹⁹ American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ’s process for ethics waivers.²⁰ As another example, American Oversight has a project called “Audit the Wall,” where the organization is gathering and analyzing information and commenting on public releases of

¹⁵ 24 C.F.R. § 15.106(k)(1)(i).

¹⁶ *Id.*

¹⁷ 24 C.F.R. § 15.106(k)(1)(ii), (k)(3).

¹⁸ American Oversight currently has approximately 11,800 page likes on Facebook and 40,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 1, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 1, 2018).

¹⁹ *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

²⁰ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.²¹

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with HUD on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Dan McGrath at foia@americanoversight.org or 202-897-4213. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight

²¹ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.